

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Charles Jordan,)	C/A NO. 8:09-51-CMC-BHH
)	
Petitioner,)	
)	ORDER
v.)	
)	
Henry McMaster, S.C. Attorney General, and Warden,)	
)	
Respondents.)	
)	

This matter is before the court on limited remand from the Fourth Circuit Court of Appeals for this court to issue or deny a certificate of appealability. *See* Dkt. # 49.

This matter was filed by Petitioner as a petition for relief pursuant to 28 U.S.C. § 2254. However, this court construed Petitioner's application as a petition for relief under 28 U.S.C. § 2241. *See* Opinion and Order (Dkt. # 43, filed Jan. 29, 2010). Therefore, the change in the Rules Governing Section 2254 Cases in the United States District Courts, *see* Rule 11(a), which requires a District Court to issue or deny a certificate of appealability when a final ruling on a habeas petition is issued is not applicable to this case.

However, to the extent applicable to Petitioner's application for relief presented as a § 2254 petition, the governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable jurists would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie

CAMERON McGOWAN CURRIE

UNITED STATES DISTRICT JUDGE

Columbia, South Carolina

February 23, 2010

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